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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[PS Docket No. 13-87; PS Docket No. 06-229, WT Docket No. 96-86, RM-11433 and RM- 11577, FCC 16-111]

Service Rules Governing Narrowband Operations in the 769-775/799-805 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order on Reconsideration, the Federal Communications Commission (Commission) provides more flexibility to radio equipment manufacturers interested in the marketing and sale of 700 MHz equipment to public safety agencies by revising the Commission's rules and providing more time for interoperability testing of equipment designed to operate on the 700 MHz narrowband interoperability channels. The Commission balances the needs of manufacturers for flexibility with public safety's need for verified interoperable communications during emergencies. The Commission also provides guidance to states that wish to delegate administration of certain 700 MHz narrowband channels and corrects certain rules governing public safety spectrum.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for §§ 2.1033(c)(20) and 90.548(c), containing new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995, which will become effective

after such approval, on the effective date specified in a notification that the Commission will publish in the Federal Register announcing such approval and effective date.

FOR FURTHER INFORMATION CONTACT: John Evanoff, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-0848 or john.evanoff@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in PS Docket No. 13-87, FCC 16-111, released on August 22, 2016. The document is available for download at http://fjallfoss.fcc.gov/edocs_public/. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

In 2014, the Commission adopted a Report and Order in the captioned proceeding, which, *inter alia*, provided that mobile and portable 700 MHz public safety band radios designed to operate on the 700 MHz interoperability channels would be presumed interoperable if they received Project 25 Compliance Acceptance Program (CAP) approval (hereinafter referred to as P25 CAP), 79 FR 71321 (Dec. 2, 2014). In the alternative, manufacturers could accompany their equipment certification applications with other documentation demonstrating how the radio submitted for certification complied with Project 25 standards and was interoperable across vendors. The

Telecommunications Industry Association (TIA) filed a timely petition for reconsideration of the Report and Order, 80 FR 4239 (Jan. 27, 2015).

In this Order on Reconsideration, the Commission grants the Petition in part and modifies those rules to provide greater flexibility to manufacturers considering the marketing and sale of equipment to public safety. In particular, this Order on Reconsideration allows CAP compliance or the equivalent to be demonstrated after equipment certification but prior to the marketing or sale of that equipment. Thereby manufacturers may obtain FCC equipment authorization for equipment designed to operate on the 700 MHz narrowband interoperability channels before obtaining P-25 CAP approval or the equivalent. P-25 CAP approval, or the equivalent, however, must be obtained before equipment is marketed or sold, thus mitigating the risk to public safety, including state and local governmental entities, that equipment purchased may not be interoperable across vendors. Lack of interoperability can severely compromise public safety agencies' response to emergencies. The Commission concludes that CAP compliance or the equivalent completed before the marketing or sale of equipment to public safety mitigates the risk of lack of interoperability while accommodating the needs of manufacturers for flexibility in the equipment certification and P-25 CAP, or equivalent, processes. For these reasons, the Commission modifies Sections 2.1033(c)(20) and 90.548(c) of the rules.

Separately, in response to a request for clarification filed by the National Regional Planning Council (NRPC), the Commission clarifies that states may delegate administration of the 700 MHz air-ground channels to the 700 MHz Regional Planning Committees (RPCs). The Commission also amends Section 90.535 of the Commission's

rules to reflect its previous decision to eliminate the 700 MHz narrowbanding deadline. Additionally, the Commission corrects Sections 90.209 and 90.210 of the Commission's technical rules to accurately reflect bandwidth limitations and emission masks. Finally, the Commission conforms Sections 90.523(a)-(d) to the introductory sentence of Section 90.523, to reflect the restriction of the public safety narrowband spectrum bands to 769-775/799-805 MHz, as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act).

Procedural Matters

A. Supplemental Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA).

Pursuant to the RFA, a Final Regulatory Flexibility Analysis (“FRFA”) was incorporated into the Report and Order.

This Order on Reconsideration amends the rules adopted in the Report and Order in this proceeding to provide manufacturers with greater flexibility in the equipment

authorization process. Those rules required demonstration of Project 25 compliance (through CAP or otherwise) at the time of the filing of the equipment authorization application, when certain aspects of CAP compliance may be more difficult to demonstrate (e.g., the lack of availability of product versions needed for interoperability testing). Instead, the Order on Reconsideration requires CAP certification (or other demonstration of Project 25 compliance) before radios may be marketed or sold. This change preserves public safety interoperability goals while providing manufacturers with needed additional flexibility.

This Order on Reconsideration also clarifies that States may delegate the administration of the 700 MHz air-ground channels to 700 MHz Regional Planning Committees; amends Section 90.523 of the rules to accurately reflect the 700 MHz narrowband public safety bands; and amends Section 90.535 of the rules to implement the Commission's decision to eliminate the 700 MHz narrowbanding mandate. Finally, the Order on Reconsideration corrects Sections 90.209 and 90.210 of the Commission's technical rules to accurately reflect the correct bandwidth limitations and emission masks.

B. Paperwork Reduction Act of 1995 Analysis

The Order on Reconsideration contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

C. Congressional Review Act

The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**D. Federal Rules that May Duplicate, Overlap, or Conflict with the
Proposed Rules**

None.

Ordering Clauses

Accordingly, **IT IS ORDERED** that, pursuant to Sections 1, 4(i), 303, 316, 332, 337, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, 316, 332, 337, 405, this Order on Reconsideration **IS HEREBY ADOPTED**.

IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 405, and Section 1.429 of the Commission's rules, 47 CFR 1.429, that the Petition for Reconsideration filed by the Telecommunications Industries Association on January 2, 2015, **IS GRANTED** to the extent discussed herein.

IT IS FURTHER ORDERED that Sections 2.1033(c)(20), 90.209, 90.210, 90.523, 90.535(d) and 90.548(c) of the Commission's rules are **AMENDED**. The amendments to Sections 2.1033(c)(20) and 90.548(c) require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and shall become effective after the Commission publishes a notification in the Federal Register announcing such approval and the relevant effective date. The amendments to Sections

90.209, 90.210, 90.523, and 90.535(d) shall become effective on publication of this Order on Reconsideration in the Federal Register.

IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 90

Radio.

FEDERAL COMMUNICATIONS COMMISSION.

Gloria J. Miles,
Federal Register Liaison Officer.
Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2 and 90 as follows:

**PART 2— FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS;
GENERAL RULES AND REGULATIONS**

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 336, unless otherwise noted.

2. Section 2.1033 is amended by revising paragraph (c)(20) to read as follows:

§2.1033 Application for certification.

* * * * *

(c) * * *

(20) Before equipment operating under part 90 of this chapter and capable of operating on the 700 MHz interoperability channels (See § 90.531(b)(1) of this chapter) may be marketed or sold, the manufacturer thereof shall have a Compliance Assessment Program Supplier's Declaration of Conformity and Summary Test Report or, alternatively, a document detailing how the manufacturer determined that its equipment complies with § 90.548 of this chapter and that the equipment is interoperable across vendors. Submission of a 700 MHz narrowband radio for certification will constitute a representation by the manufacturer that the radio will be shown, by testing, to be interoperable across vendors before it is marketed or sold.

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PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

4. Section 90.209 is amended in the table in paragraph (b)(5) by revising the entries for “406-512” and “809-824/854-869” to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(5) * * *

STANDARD CHANNEL SPACING/BANDWIDTH

Frequency band (MHz)	Channel spacing (kHz)	Authorized bandwidth (kHz)
***	**	**
406-512 ²	¹ 6.25	^{1, 3, 6} 20/11.25/6
***	**	**
809-824/854-869	25	⁶ 20
***	**	**

¹For stations authorized on or after August 18, 1995.

²Bandwidths for radiolocation stations in the 420-450 MHz band and for stations operating in bands subject to this footnote will be reviewed and authorized on a case-by-case basis.

³Operations using equipment designed to operate with a 25 kHz channel bandwidth will be authorized a 20 kHz bandwidth. Operations using equipment designed to operate with a 12.5 kHz channel bandwidth will be authorized a 11.25 kHz bandwidth. Operations using equipment designed to operate with a 6.25 kHz channel bandwidth will be authorized a 6 kHz bandwidth. All stations must operate on channels with a bandwidth of 12.5 kHz or less beginning January 1, 2013, unless the operations meet the efficiency standard of §90.203(j)(3).

* * * * *

⁶Operations using equipment designed to operate with a 25 kHz channel bandwidth may be authorized up to a 22 kHz bandwidth if the equipment meets the Adjacent Channel Power limits of §90.221.

* * * * *

5. Section 90.210 is amended by revising paragraph (h)(5) to read as follows:

§ 90.210 Emission masks.

* * * * *

(h) * * *

(5) On any frequency removed from the center of the authorized bandwidth by more than 25 kHz: At least $43 + 10 \log (P)$ dB.

* * * * *

6. Section 90.523 is amended by revising paragraphs (a), (b) introductory text, (c), and (d) to read as follows:

§90.523 Eligibility.

* * * * *

(a) State or local government entities. Any territory, possession, state, city, county, town, or similar State or local governmental entity is eligible to hold authorizations in the 769-775 MHz and 799-805 MHz frequency bands.

(b) Nongovernmental organizations. A nongovernmental organization (NGO) that provides services, the sole or principal purpose of which is to protect the safety of life, health, or property, is eligible to hold an authorization for a system operating in the 769-775 MHz and 799-805 MHz frequency bands for transmission or reception of communications essential to providing such services if (and only for so long as) the NGO applicant/licensee:

* * * * *

(c) All NGO authorizations are conditional. NGOs assume all risks associated with operating under conditional authority. Authorizations issued to NGOs to operate systems in the 769-775 MHz and 799-805 MHz frequency bands include the following condition: If at any time the supporting governmental entity (see paragraph (b)(1) of this section) notifies the Commission in writing of such governmental entity's termination of its authorization of a NGO's operation of a system in the 769-775 MHz and 799-805 MHz frequency bands, the NGO's application shall be dismissed automatically or, if authorized by the Commission, the NGO's authorization shall terminate automatically.

(d) Paragraphs (a) and (b) of this section notwithstanding, no entity is eligible to hold an authorization for a system operating in the 769-775 MHz and 799-805 MHz frequency bands on the basis of services, the sole or principal purpose of which is to protect the safety of life, health or property, that such entity makes commercially available to the public.

* * * * *

7. Section 90.535(d) is revised to read as follows:

§ 90.535 Modulation and spectrum usage efficiency requirements.

* * * * *

(d) Transmitters designed to operate on the channels listed in paragraphs (b)(2), (5), (6), and (7) of § 90.531 must be capable of operating in the voice mode at an efficiency of at least one voice path per 12.5 kHz of spectrum bandwidth.

8. Section 90.548(c) is revised to read as follows:

§90.548 Interoperability Technical Standards.

* * * * *

(c) Transceivers capable of operating on the interoperability channels listed in § 90.531(b)(1) shall not be marketed or sold unless the transceiver has previously been certified for interoperability by the Compliance Assessment Program (CAP) administered by the U.S. Department of Homeland Security; provided, however, that this requirement is suspended if the CAP is discontinued. Submission of a 700 MHz narrowband radio for certification will constitute a representation by the manufacturer that the radio will be shown, by testing, to be interoperable across vendors before it is marketed or sold. In the alternative, manufacturers may employ their own protocol for verifying compliance with Project 25 standards and determining that their product is interoperable among vendors. In the event that field experience reveals that a transceiver is not interoperable, the Commission may require the manufacturer thereof to provide evidence of compliance with this section.

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